

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**Item No. 7  
Doc. No. 2**

**TENTATIVE ORDER NO. R9-2004-0101  
ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
FOR  
MANDATORY MINIMUM PENALTIES  
AGAINST  
KINDER MORGAN ENERGY PARTNERS, LP  
MISSION VALLEY TERMINAL  
VIOLATION  
OF  
ORDER NO. R9-2001-0096, NPDES NO. CAG919002  
GENERAL WASTE DISCHARGE REQUIREMENTS FOR GROUNDWATER  
EXTRACTION WASTE DISCHARGES FROM CONSTRUCTION, REMEDIATION,  
AND PERMANENT GROUNDWATER EXTRACTION PROJECTS TO SURFACE  
WATERS WITHIN THE SAN DIEGO REGION, EXCEPT FOR SAN DIEGO BAY**

The California Regional Water Quality Control Board, San Diego Region (hereafter Regional Board), having received a signed waiver of public hearing form with a \$3,000 check and having reviewed the allegations contained in Complaint No. R9-2004-0080, dated March 11, 2004, and on the recommendation for administrative assessment of Civil Liability pursuant to California Water Code section 13385 in the amount of \$3,000, finds as follows:

1. Kinder Morgan Energy Partners, LP (hereafter Kinder Morgan) is the owner of Mission Valley Terminal located at 9950 San Diego Mission Road, San Diego, California, and is enrolled under Order No. R9-2001-0096 to discharge remediated groundwater to Murphy Canyon Creek (WDID No. 9 000000506).
2. On or about October 15, 2001 Kinder Morgan violated Order No. R9-2001-0096, *General Waste Discharge Requirements For Groundwater Extraction Waste Discharges From Construction, Remediation, And Permanent Groundwater Extraction Projects To Surface Waters Within The San Diego Region, Except For San Diego Bay*. This violation is due to an exceedance of the Selenium Average Monthly Discharge Specification as reported in the 2001 Semi-Annual Monitoring Report received by the Regional Board on February 5, 2002. The Discharge Specifications' section of Order No. R9-2001-0096 states that the Selenium Average Monthly effluent limitation is 5 µg/L. On or about October 15, 2001, Kinder Morgan reported an Average Monthly Selenium result of 11 µg/L, more than 20% greater than the Discharge Specification. Water Code section 13385 requires imposition of a "mandatory minimum penalty" for this violation.
3. Water Code Section 13385(h)(2) states that a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more, or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more. Selenium is a Group II pollutant.

4. Consideration of the factors prescribed in California Water Code Section 13385(e) based upon information available to the Regional Board supports assessment of civil liability pursuant to Water Code section 13385(i) in the amount of \$3,000. Furthermore, Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. Under Water Code section 13385(h) the amount of the mandatory minimum penalty that must be assessed is \$3,000 for the serious violation.
5. The Regional Board incurred costs totaling \$1,391, to prosecute this enforcement action; the costs include investigation, preparation of enforcement documents, and communication with the Discharger.
6. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

**IT IS HEREBY ORDERED** that pursuant to section 13385 of the California Water Code, civil liability is imposed on Kinder Morgan Energy Partners, LP in the amount of three thousand dollars (\$3,000).

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on May 12, 2004.

TENTATIVE

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JOHN H. ROBERTUS  
Executive Officer